

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Case No. CR-24-00076-PRW
)	
JOSHUA WILLIAM NEALIS,)	
)	
Defendant.)	

ORDER

Before the Court is Defendant Joshua William Nealis’s Motion to Dismiss the Indictment as Unconstitutional (Dkt. 28). On February 20, 2024, a federal grand jury returned an indictment charging Mr. Nealis with one count of violating 18 U.S.C. § 922(g)(1). Mr. Nealis’s motion argues that § 922(g)(1) violates the Second Amendment.

In 2009, the Tenth Circuit in *United States v. McCane* rejected a post-*Heller* challenge to the constitutionality of § 922(g)(1),¹ relying on the Supreme Court’s statement in *District of Columbia v. Heller* that “‘nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons[.]’”² Although Mr. Nealis impliedly argues that the Supreme Court’s decision in *New York State Rifle & Pistol Ass’n, Inc. v. Bruen*³ invalidates *McCane*, the Tenth Circuit recently reaffirmed *McCane*’s

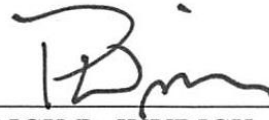
¹ *United States v. McCane*, 573 F.3d 1037, 1047 (10th Cir. 2009).

² *Id.* (quoting *District of Columbia v. Heller*, 554 U.S. 570, 626–27 (2008)).

³ 142 S. Ct. 2111 (2022).

holding in *Vincent v. Garland*.⁴ *McCane* therefore remains binding precedent that this district court is duty bound to follow. Accordingly, Mr. Nealis's Motion to Dismiss the Indictment as Unconstitutional (Dkt. 28) is **DENIED**.

IT IS SO ORDERED this 29th day of April 2024.

A handwritten signature in black ink, appearing to read 'P. Wyrick', is positioned above a horizontal line.

PATRICK R. WYRICK
UNITED STATES DISTRICT JUDGE

⁴ 80 F.4th 1197, 1202 (10th Cir. 2023) (“*McCane* . . . upheld the constitutionality of the federal ban for any convicted felon’s possession of a firearm. . . . We thus follow *McCane* and affirm the dismissal.”).